82-1708

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

FARRELL MAC JOHNSON, Appellant

v.

THE STATE OF TEXAS, Appellee

ON APPEAL FROM THE COURT OF CRIMINAL APPEALS, STATE OF TEXAS

JURISDICTIONAL STATEMENT

E. ED TODD, JR.
105 Palo Pinto, Suite A
P. O. Box 241
Weatherford, Texas 76086
(817) 594-7683
TBA# 20101000

Counsel for Appellant

April 14, 1983

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

FARRELL MAC JOHNSON, Appellant

v.

THE STATE OF TEXAS, Appellee

ON APPEAL FROM THE COURT OF CRIMINAL APPEALS, STATE OF TEXAS

JURISDICTIONAL STATEMENT

QUESTIONS PRESENTED

(1.) Whether police officers pursuant to the art. 14.01 V.A.C.C.P. TEXAS, in making an arrest under "PLAIN VIEW" statute must comply with those requirements as set out by the Court in Coolidge v. New

Hampshire 29L ED 2nd. Page 564 (1971), and being specifically the requirements of "inadvertancy" and "exigient circumstances" in order to avoid affecting an arrest and seizure that would be illegal under the 4th., 5th., and 14th. ammendments of the U.S. Constitution when affected without a valid search and arrest warrant?

(2.) The second question to be determined is, does a Defendant, after conviction, and at punishment stage, who takes the stand to prove up his eligibility for probation and makes a judicial confession, waive his objections to illegally produced evidence at the guilt or innocence stage, under the doctrine of "Curative Admissability" as developed by the State courts of Texas, when Defendant was required to testify at punishment stage in order to prove up his eligibility for probation?

INDEX

CITATIONS

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

FARRELL MAC JOHNSON, Appellant

V.

THE STATE OF TEXAS, Appellee

ON APPEAL FROM THE COURTS OF CRIMINAL APPEAL, STATE OF TEXAS

JURISDICTIONAL STATEMENT

Farrell Mac Johnson, the Appellant, appeals from the final judgment of the Court of Criminal Appeals of the State of Texas, dated February 2, 1983, which upheld a prior appeal court ruling upholding the original state district court's judgment

rendered based upon a jury determination of guilty on the offense of possession of marijuana over four ounces, wherein the punishment was set at five years confinement and from such judgment Appellant appealed based upon the violation of his right to a fair trial as guaranteed by the 4th., 5th. and 14th., ammendments of the U. S. Constitution.

OPINIONS BELOW

The opinion of the Court of Criminal Appeals which appears in the Appendix hereto, P. A-11 & 12,infra, was not reported. As was not the summary denial of Appellant's motion for rehearing before the same court.

The opinion of the Court of Appeals for the Second Supreme Judicial District of Texas which appears in the Appendix hereto, P. A-1--A8, infra, was not reported as was not the summary overruling of Appellant's motion for rehearing in that court. Both Court's full opinions are cited in the Appendix.

JURISDICTION

The last action taken by a state court in the State of Texas in regard to this case was the denial of the Motion for rehearing by the Court of Criminal Appeals of the State of Texas which was denied on February 2, 1983. See page A-11-12, infra.

Notice of intention to appeal by Appellant's attorney was originally given in this case on February 15th., 1983 by filing a Motion to Stay Mandate with the Court of Appeals, Second Supreme Judicial District asking for a stay of State Mandate pursuant to State Rules until such time as Appellant could file his application for Certiorari in the United States Supreme Court, see page A14-16, infra. A supplemental notice of appeal to this case was duly filed in the Court of Appeals of the State of Texas, Second Supreme Judicial District on April 12, 1983, see page A19-22,infra.

This appeal is being docketed in this court within ninety (90) days from the denial of rehearing below. The jurisdiction of this court is invoked under 28 U.S.C. Section 1257(1).

CONSTITUTIONAL PROVISIONS AND RULES

Reference is made herein to the Fourth, Fifth, and Fourteenth Ammendments of the Constitution of the United States which ammendments are set out in full in the Appendix herein on Pages A 23.

Reference is further made to article 14.01 Vernon's Annotated Code of Criminal Proceedures of the State of Texas, short titled "Offense Within View", which is set out fully in the Appendix herein on pages A 24.

Reference is further made to article 42.12 V.A.C.C.P.,Tex., 3a. "Probations" which article is set out in full in the Appendix herein on pages A 24-25.

RAISING THE FEDERAL QUESTION

Appellant at the earliest stage of proceedings in trial court raised the issue of illegal arrest and illegal search and seizure in his Motion to Suppress at a hearing on January 24, 1980 at which time Appellant's motion to suppress was denied.

Appellant continued to raise such issue by properly objecting to the introduction of evidence during the trial in chief. It was and is Appellant's contention that such illegal arrest and illegal search and seizure without a valid warrant under the theory of "PLAIN VIEW" without meeting the test of Coolidge v. New Hampshire were "unconstitutional for repugnancy to the provisions of the 4th., 5th., and 14th. ammendments to the United States Constitution." As the opinion of the Court of Appeals Second Supreme Judicial District of Texas indicates, "the issue as to the validity of the affidavit and

warrant is moot because the officers were authorized to conduct a search as a result of their observation of the marijuana growing in 'PLAIN VIEW'." Although numerous Supreme Court cases were cited in Appellant's brief before the Court of Appeals Second Supreme Judicial District of Texas said Court preferred to overlook such cases and rested its decision based upon art. 14.01 V.A.C.C.P. p. A1-A8, infra.

Appellant further continued to raise the unconstitutional claim before the highest court for Criminal Appeals in the State of Texas, that being the Court of Criminal Appeals. In the opinion of said Court, rendered on January 5, 1983, the Court of Criminal Appeals did not speak to the points raised by Appellant in regards to illegal arrest, search and seizure, and in fact noted that in the instant case said court did not agree with the analysis employed by the Court of Appeals, p. A11-12, infra.

However, said Court of Criminal Appeals of the State of Texas did state in that same Opinion that "any error with respect to arrest and search were waived by Appellant's judicial confession". This doctrine called "curative admissability" by the courts in the State of Texas was addressed by the Appellant in his subsequent motion for rehearing before the Court of Criminal Appeals wherein Claimant raised the issue, for the first time as a result of the Court of Appeal's ruling, that such doctrine flies in the face of Appellant's 5th. Ammendment freedoms as Appellant was required to take the stand at the punishment stage in the instant case in order to prove up his eligibility for probation. At that time, Appellant cited among other cases Harrison v. U.S. 20L. ED2nd. p. 1047, wherein Justice Stewart speaking for the U.S. Supreme Court stated "that the Defendant's trial testimony was the inadmissable fruit of the

illegally procured confessions and that the Government had failed to sustain its burden of showing that its wrongful use of the illegally obtained confessions did not induce the Defendant's testimony at his former trial." It was appellant's contention that the same facts and circumstances in the Harrison case applying to confessions would apply to other illegally obtained evidence by the State and that this, coupled with the requirement that Defendant prove up his eligibility for probation, placed Defendant in the untenable position of testifying at the punishment stage. The Court of Criminal Appeals of the State of Texas gave no opinion in denying Appellant's motion for rehearing, thus rejecting this Federal Constitutional Claim.

STATEMENT OF THE CASE

On September 29, 1979, officers of the Parker County Sherriff's office received information that Appellant, Farrell

Mac Johnson, was growing marijuana in the back yard of his residence in Weatherford, Parker County, Texas. The officers proceeded to that location and then went around the corner of the property abutting the rear of Appellant's lot. The owner of the adjacent property permitted the officers to enter onto his lot to investigate the reported offense. From the rear of the lot, the officers observed what appeared to be marijuana plants growing above the plastic covered fence surrounding Appellant's back yard. Having verified the earlier tip, the officers left the scene and procured a search and arrest warrant based on an affidavit containing only facts obtained from the informant as to those opposed available to the officer-affiant. The officers then returned to the Appellant's residence, arrested Appellant at the front door of his residency, conducted a search of his back yard and confiscated marijuana

and other various articles later introduced at trial.

As set out in the paragraph on "Raising the Federal Question", Appellant initially raised the question of the illegal arrest, search and seizure on his motion to suppress at a hearing on said motion, and continued during the trial in chief to raise said motion by objecting and excepting to the introduction of evidence illegally obtained by the State. These questions continued to be raised on a motion for new trial, and at all Appellant levels up to and including this Appeal, by assignment of Error. The various appeal courts specific rulings or lack thereof, were noted in the same paragraph.

THE QUESTION IS SUBSTANTIAL

The question proposed involving search and seizure has been spoken to on many occassions by this court HOWEVER never a fact situation as contemplated herein

where police officers acting on information make a "PLAIN VIEW", and subsequently obtain a warrant, invalid though it was, prior to making a subsequent arrest, and search and seizure. Appellant believes this to be a novel and substantial question which has never before been treated by this court. Not only would it be grossly unfair to Appellant herein to allow the lower courts decisions to stand, but Appellant believes this Court must decide at its earliest opportunity whether to modify the exclusionary rule based on what amounts to a "good faith exception by police officers" or continue to require that all states follow the exclusionary rule as now in effect. Certainly there can be no question that a conflict of decisions between those made in the instant case at the State level and those currently in force at the United States Supreme Court level exist.

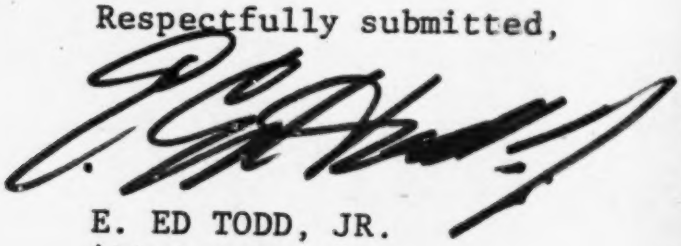
Further, the second question presented

involving Appellant's judicial confession at the punishment stage while proving up his eligibility for probation is one of substantial import as the continued opinion by the Appellate Courts of this State will have great effect on Criminal Defendants desiring to request probation in the State of Texas in like or similar circumstances. Admittedly, this issue has what could be considered two seperate distinct facets; the first involving Appellant being coerced into position into taking the stand because of the prior introduction of inadmissable evidence and the second being the separate and distinct requirement by statute in the State of Texas compelling Defendant to prove up his eligibility for probation or forfeit that statutory right. Appellant believes both sides of this question are substantial and requires entertainment by this court.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,



E. ED TODD, JR.
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105 Palo Pinto, Suite A
P. O. Box 241
Weatherford, Texas 76086
(817) 594-7683
TBA# 20101000

April 14, 1983 Counsel for Appellant

CERTIFICATE OF SERVICE

I, E. ED TODD, JR., a member of the Bar of the Supreme Court of the United States and Counsel of Record for FARRELL MAC JOHNSON, Appellant, herein, hereby certify that on April 14, 1983, pursuant to the rules of the United States Supreme Court, I served three copies of the Jurisdictional Statement on each of the parties

herein as follows: On April 14, 1983, on Mack Smith, District Attorney 43rd. Judicial District Court, Parker County, Texas, by depositing such copies in the United States Post Office, Weatherford, Parker County, Texas, with first class postage prepaid, properly addressed to the Post Office address of the above named Mack Smith, Counsel of Record for the State of Texas, Appellee herein, at Parker County Court House, Weatherford, Texas 76086

All parties required to be served have been served.

SIGNED this the 14th. day of April, 1983.

E. ED TODD, JR.
Attorney-at-Law
105 Palo Pinto, Suite A
P. O. Box 241
Weatherford, Texas 76086
(817) 594-7683
TBA# 20101000

Counsel for Appellant

FROM THE CLERK'S OFFICE,
COURT OF APPEALS AT FORT WORTH

NO. 2-81-212-CR

IN THE COURT OF APPEALS FOR THE
SECOND SUPREME JUDICIAL DISTRICT
OF TEXAS

FARRELL MAC JOHNSON — APPELLANT

VS.

THE STATE OF TEXAS — STATE

FROM THE DISTRICT COURT OF
PARKER COUNTY

OPINION

This is an appeal from a conviction of possession of marijuana over four ounces. Punishment was assessed by the jury at five years confinement in the Texas Department of corrections.

We affirm.

On September 29, 1979, officers of the Parker County Sherriff's Office received information that appellant, Farrell Mac Johnson, was growing marijuana in the back yard

of his residence at 406 E. Lee in Weatherford. The officers proceeded to that location and then went around the corner of the property abutting the rear of appellant's lot. The owner of the adjacent property permitted the officers to enter onto his lot to investigate the reported offense. From the rear of that lot, at 403 S. Rush, the officers observed what appeared to be marijuana plants growing above the plastic covered fence surrounding appellant's back yard. The officers got a closer look at the plants by peering through holes in the plastic liner on the chain link fence. Having verified the earlier tip, the officers left the scene and procured a search and arrest warrant. The officers returned to appellant's residence, presented the warrant to him, conducted a search of his back yard and arrested appellant for possession of marijuana.

By his initial ground of error, appellant contends that the trial court erred in overruling his motion to suppress evidence and statements taken at the scene of arrest. Essentially, appellant maintains that the search and arrest warrant was invalid and therefore, the evidence obtained pursuant thereto was tainted by the illegal arrest and search. Appellant bases his claim on the fact that the warrant and affidavit in support thereof were insufficient to show probable cause. The State contends to the contrary that the issue as to the validity of the affidavit and warrant is moot because the officers were authorized to conduct a search as a result of their observation of the marijuana growing in "plain view". We agree.

The informant's tip received by the Parker County Sherriff's Department did not constitute probable cause for appellant's arrest or a search of the premises.

However, it was sufficient to authorize the officers to initiate an investigation to determine whether the alleged contraband was in plain view. George v. State, 509 S.W.2nd. 347 (Tex. Crim. App. 1974). Upon their investigation from a vantage point beyond appellant's property, the officers observed between twenty-five and fifty marijuana plants, up to ten feet in height growing in appellant's back yard. This observation by the officers constituted sufficient probable cause for appellant's arrest and the search of the premises incident to that arrest. V.A.C.C.P. art. 14.01 (1977). The officers' subsequent procurement of a warrant was commendable, though unnecessary. Inasmuch as we conclude that the officers had probable cause to arrest appellant and search the premises without a search warrant, it is unnecessary for us to pass on its validity. Kay v. State, 489 SW2nd. 861 (Tex. Crim. App. 1973). The

fruits of the legal search were properly admitted into evidence. Ground of error one is overruled.

Next, appellant challenges the sufficiency of the evidence regarding his possession of the marijuana seized at his residence. At the punishment phase of the trial, appellant took the stand and unequivocally admitted to intentionally and knowingly possessing a usable quantity of marijuana of more than four ounces. This testimony precludes our consideration of the sufficiency of the evidence. Reeves v. State 566 S.W.2nd. 630 (Tex. Crim. App. 1978); Dugger v. State, 543 S.W.2nd. 374 (Tex. Crim. App. 1976). Appellant's second ground of error is overruled.

Finally, appellant argues that the trial court erred in overruling his untimely motion for new trial, which was not filed until more than ten months had expired from the date of his sentencing.

V.A.C.C.P. at. 40.05 (1979), then in effect, provides that: "A motion for new trial shall be filed within ten days after conviction...and may be amended by leave of the court at any time before it is acted on within twenty days after it is filed... [B]ut for good cause shown the time for filing or amending may be extended by the court...." (Emphasis added). Appellant made no showing of "good cause". Consequently, the motion should not have been heard by the trial court, and this court is not bound to consider the record made on the untimely motion and hearing thereon. Morales v. State, 587 S.W.2nd. 418 (Tex. Crim. App. 1979). Nevertheless, our review of the record does not indicate an abuse of discretion by the trial court in denying appellant's motion based on the evidence presented. Ground of error three is overruled.

The judgment of the trial court is

affirmed.

RICHARD LEE BROWN,
JUSTICE

PANEL B

HUGHES, BROWN and HOLMAN, JJ.

DO NOT PUBLISH

TEX. CR. APP.R. 207(b)

STATE OF TEXAS *

COUNTY OF TARRANT *

I, Yvonne Palmer, Clerk of the Court of Appeals in and for the Second Supreme Judicial District of Texas, certify that the foregoing is a full, true and correct copy of the opinion delivered by said Court on the 4th. day of August, 1982 in the above numbered and entitled cause.

Given under my hand and seal of the Court of Appeals on this 18th. day of October, 1982.

/s/YVONNE PALMER, CLERK

file marked Aug. 4, 1982

COURT OF APPEALS
200 Civil Courts Building
Fort Worth, TX. 76102
817/334-1166
Yvonne Palmer, Clerk

September 18, 1982

TO: ALL ATTORNEYS OF RECORD

RE: CA No. 2-81-212-CR
Farrell Mac Johnson
vs.
The State of Texas

Please take notice that the Court has this date OVERRULED motion for rehearing of appellant in the above styled cause.

Yours very truly,

Yvonne Palmer, Clerk

/s/YVONNE PALMER

by: Chief Deputy Clerk

/s/ Gypsy Anne Flenikin

gaf

FARRELL MAC JOHNSON, Appellant NO. 876-82 VS. THE STATE OF TEXAS, Appellee	Appellant's Petition for Discretionary Review from the Court of Appeals for the Second Supreme Judicial District of Texas (PARKER COUNTY)

O P I N I O N

Appellant was convicted of the offense of possession of marijuana, and the punishment was assessed at imprisonment for five years. The Court of Appeals affirmed the conviction in an unpublished opinion. Johnson v. State, No. 02-81-212-CR, delivered August 4, 1982.

We agree with the Court of Appeals that Appellant's conviction should be affirmed. However, refusal of a petition for discretionary review does not constitute an endorsement of the reasoning employed by the court of appeals. In the instant case, we do not agree with the analysis employed by the Court of Appeals with respect to Appellant's second and third grounds of error. Any error with respect

to the arrest and search were waived by Appellant's judicial confession.

Appellant's petition for discretionary review is refused.

PER CURIAM

(Delivered January 5, 1983)

En banc

DO NOT PUBLISH

FARRELL MAC JOHNSON, Appellant NO. 876-82 VS. THE STATE OF TEXAS, Appellee	Appellant's Petition for Discretionary Review from the Court of Appeals for the Second Supreme Judicial Distirct of Texas (PARKER COUNTY)

O P I N I O N

Appellant was convicted of the offense of possession of marijuana, and the punishment was assessed at imprisonment for five years. The Court of Appeals affirmed the conviction in an unpublished opinion. Johnson vs. State, No. 02-81-212-CR, delivered August 4, 1982.

We agree with the Court of Appeals that Appellant's conviction should be affirmed. However, refusal of a petition for discretionary review does not constitute an endorsement of the reasoning employed by the Court of Appeals. In the instant case we do not agree with the analysis employed by the Court of Appeals with respect to Appellant's second and third grounds of error. Any error with respect to the ar-

rest and search were waived by Appellant's judicial confession.

Appellant's petition for discretionary review is refused.

PER CURIAM

En banc

DO NOT PUBLISH

Delivered January 5, 1983

Motion for rehearing denied on Feb. 2, 1983.

Do not issue your mandate for fifteen (15) days from February 2, 1983.

A TRUE COPY ATTEST:

THOMAS LOWE, CLERK
COURT OF CRIMINAL APPEALS

BY: /s/ SHERRIE ERICSON
Deputy Clerk

COURT OF CRIMINAL APPEALS
OF TEXAS

CLERK'S OFFICE

Austin, Texas
February.2,.1983

I have been instructed to advise that the Court has this day denied the Appellant's Motion for Rehearing on petition for discretionary review in Cause No. 0876-82, JOHNSON, FARRELL MAC

Sincerely yours,

THOMAS LOWE, Clerk

02-81-212

IN THE COURT OF APPEALS

OF THE STATE OF TEXAS

SECOND SUPREME JUDICIAL DISTRICT

FARRELL MAC JOHNSON Appellant	*	
VS.	*	No. 2-81-212-CR
THE STATE OF TEXAS Appellee	*	

APPEALED FROM CAUSE NO. 8473
OF THE 43RD. JUDICIAL DISTRICT COURT,
PARKER COUNTY, TEXAS
HONORABLE HARRY HOPKINS, JUDGE PRESIDING

MOTION TO STAY MANDATE

NOW COMES Appellant, FARRELL MAC JOHNSON, by and through his attorney of record and pursuant to Rules Numbers 210 and 310 of the Texas Rules of Criminal Procedure would show unto the Court that on February 2, 1983 the Court of Criminal Appeals of Texas denied Appellant's Motion for Rehearing on his Petition for Discretionary Review in Cause No. 0876082 entitled The

State of Texas versus Farrell Mac Johnson and on said date returned said case to the Court of Appeals of the State of Texas, for the Second Supreme Judicial District for issuance of a Mandate.

Appellant will now show to the Court that in order to receive his Constitutional rights as set out in previous briefs on file in this Court, as well as the Court of Criminal Appeals, it is necessary that he file a Petition for Writ of Certiorari to the United States Supreme Court. Appellant will further show unto the Court that his Attorney of Record has no prior experience before the United States Supreme Court and that it will be necessary for said Attorney to become licensed to practice in the United States Supreme Court and that additional time will be required to properly protect the Appellant's rights in the preparation of said Petition for Certiorari.

Therefore, Appellant would respect-

fully request that this Court of Appeals stay the Mandate of said Court of Criminal Appeals pursuant to the Rules as above set out and that said Mandate be stayed for a period of sixty (60) days from the date of said Order.

Respectfully submitted,

/s/ E. ED TODD, JR.
Attorney-at-Law
105 Palo Pinto, Suite A
P. O. Box 241
Weatherford, Texas 76086
817/594-7683
TBA# 20101000

file marked: Feb. 15, 1983

NO. 2-81-212-CR

IN THE COURT OF APPEALS
FOR THE
SECOND SUPREME JUDICIAL DISTRICT
OF TEXAS

FARRELL MAC JOHNSON Appellant	*	
VS.	*	NO. 2-81-212-CR
THE STATE OF TEXAS Appellee	*	

O R D E R

On this the 16th. day of February, 1983, came on to be considered appellant's motion to stay the issuance of a mandate, pending appeal to the Supreme Court of the United States.

Such Motion is hereby granted, and the issuance of the mandate by this Court is stayed.

It is the order of this Court that Appellant be given a period of 60 days, or until April 18, 1983 to request leave to file petition for Writ of Certiorari in the United States Supreme Court.

It is further ordered that no further extensions of time to stay mandate will be granted by this Court.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record and the clerk of the trial court.

It is so ordered.

SIGNED THIS 16th. day of February, 1983.

/s/ HOWARD M. FENDER
Chief Justice

NO. 2-81-212-CR

IN THE COURT OF APPEALS FOR THE

SECOND SUPREME JUDICIAL DISTRICT OF TEXAS

FARRELL MAC JOHNSON, Appellant

vs.

THE STATE OF TEXAS, Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

On the 15th. day of February, 1983, Appellant gave notice of his intentions to appeal the decision of the Court of Criminal Appeals of Texas rendered on February 2, 1983, in its denial of Appellant's request for a rehearing. Said notice was made in a motion to Stay Mandate filed on February 13, 1983, in this Court wherein this attorney, on behalf of Appellant Johnson, advised of Appellant Johnson's intention to file a Petition for Writ of Certiorari with the United States Supreme Court.

As a result of further briefing on Appellant Johnson's case, this attorney had determined that it is in Appellant's interest

to file an Appeal of the Texas State Court's ruling with the United States Supreme Court and therefore, notice is hereby given that the said FARRELL MAC JOHNSON, Appellant named above, hereby appeals to the Supreme Court of the United States from the final order of the Court of Criminal Appeals of Texas, Second Supreme Judicial District and the 43rd. Judicial District Court, Parker County, Texas, said opinion rendered by this court on August 4, 1982.

This appeal is taken pursuant to 28 U.S.C.Section 1257(1), and is made within the ninety day time period beginning on February 2, 1983, the date of the refusal by the Texas Court of Criminal Appeals for rehearing.

/s/E. ED TODD, JR.
Attorney-at-Law
105 Palo Pinto, Suite A
P. O. Box 241
Weatherford, Texas 76086
(817) 594-7683
TBA# 20101000
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I, E. ED. TODD, JR. a member of the Bar of the Supreme Court of the United States and Counsel of Record for FARRELL MAC JOHNSON, Appellant, herein, hereby certify that on April 12th., 1983 pursuant to the rules of the United States Supreme Court I served three copies of the Notice of Appeal on each of the parties herein as follows: On April 12th, 1983, on Mack Smith, District Attorney, 43rd. Judicial District Court, Parker County, Texas, by depositing such copies in the United States Post Office, Weatherford, Parker County, Texas, with first class postage prepaid, properly addressed to the Post Office address of the above named Mack Smith, Counsel of Record for the State of Texas, Appellee herein, at Parker County Court House, Weatherford, Texas 76086.

All parties required to be served have been served.

3

SIGNED this the 12th. day of April, 1983.

/s/E. ED TODD, JR.
105 Palo Pinto, Suite A
P. O. Box 241
Weatherford, Texas 76086
817/594-7683
TBA# 20101000

Counsel for Appellant

AMENDMENT FOUR:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT FIVE:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT FOURTEENTH:

Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VERNON'S ANNOTATED CODE OF CRIMINAL PROCEDURES OF THE STATE OF TEXAS

CHAPTER FOURTEEN:

"ARREST WITHOUT WARRANT"

Art. 14.01 Offense within view

(a.) A peace officer or any other person may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

(b.) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.

VERNON'S ANNOTATED CODE OF CRIMINAL PROCEDURES OF THE STATE OF TEXAS

CHAPTER FORTY-TWO

"JUDGMENT AND SENTENCE"

Art. 42.12 Adult Probation, Parole, and Mandatory Supervision Law

B. Probations

Sec. 3a. When there is a conviction in any court of this State and the punishment assessed by the Jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the Defendant was convicted, but in no event

for more than ten years, upon written, sworn motion made therefor by the Defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the offense for which the Defendant was convicted. When the trial is to a jury, and the Defendant has no counsel, the court shall inform the Defendant of his right to make such motion, and the Court shall appoint counsel to prepare and present same, if desired, by Defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this State or in any other State. (Emphasis added.) This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court if the jury recommends it in their verdict, for the period recommended by the jury.